IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6102 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
AND
HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VASANTBHAI SOMABHAI VAGHELA - Petitioner(s)
Versus
V.L.VIRANI RETURNING OFFICER & 7 - Respondent(s)

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Appearance :
MR VIKRAM J THAKOR for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1, 3, 5, 8,
None for Respondent(s) : 2, 7,
UNSERVED-REFUSED (R) for Respondent(s) : 4,
MRS VS PATHAK, AGP for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE K.A.PUJ

Date : 06/07/2007
ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

We have heard Mr Vikram Thakor for the petitioner, Mr NV Anjaria for the State Election Commission and Mrs VS Pathak, learned AGP for respondent No. 1 – Returning Officer. As far as the elected candidate, respondent No.4 herein, is concerned, Mr Thakor for the petitioner points out that respondent No.4 accepted a copy of the petition, but he refused to sign on the notice. We have, therefore, threated respondent No. 4 has having been served with the notice of Rule which was issued on 6.3.2007.

2. In view of the order that we propose to pass, it is not necessary to set out all the facts in details. The petitioner herein was one of the candidates at the election of Sarpanch of village Khanpar in Babra Taluka of Amreli District. The polling was done on 10.12.2006 and the counting was done on the night between 12th and 13th December, 2006. According to the petitioner, a bundle of 50 ballot papers was initially not counted and only 613 votes were counted out of the 663 votes cast; ultimately, the bunch of 50 ballot papers was searched out and the said bunch of 50 votes was counted in favour of respondent No.4 though those 50 votes were cast in favour of the petitioner. According to the petitioner, he protested, but the petitioner was threatened with police action and was silenced. When the petitioner represented before the Returning Officer, the petitioner was informed that the petitioner will have to make an application to the District Election Officer, Amreli and only if he directs, the recounting can be done. It appears that the petitioner submitted applications to the District Election Officer, Amreli on 13th as well as 14th December 2006 to which the petitioner received reply for the first time after he filed Special Civil Application No. 759 of 2007 on 4.1.2007. In the said petition, the State Election Commission was not joined as a party and, therefore, the petitioner withdrew the said petition with a liberty to file a fresh petition. By the time when the petitioner filed the fresh petition being Special Civil Application No. 1606 of 2007

and it came up for hearing on 16.1.2007, the petitioner received reply dated 9.1.2007 (Annexure “F”) from the Mamlatdar, Babra informing the petitioner that regarding his application dated 14.12.2007, statement will be recorded on 17.1.2007. The petitioner, therefore, withdrew the said petition being Special Civil Application No. 1606 of 2007. After the petitioner gave his statement on 17.1.2007, the petitioner received reply dated 13.2.2007 (Annexure “J”) informing the petitioner that the petitioner's request for recounting cannot be accepted. The petitioner thereupon filed the present petition on 27.2.2007.

3. At the hearing of this petition, Mr Anjaria for the State Election Commission and Mrs Pathak, learned AGP for the Returning Officer submit that apart from the fact that the petition raises disputed questions of fact, the petitioner's remedy is an election petition under Section 31 of the Gujarat Panchayats Act, 1993.

4. Having heard the learned advocates for the parties and having regard to the principles enunciated by the Apex Court in Danda Rajeshwari vs. Bodavula Hanumayamma, (1996) 6 SCC 199, we are of the view that in the facts and circumstances of the case, more particularly since the petitioner's applications dated 13th and 14th December, 2006 were for the first time replied to on 9.1.2007, that after the petitioner was called for giving a statement on 17.1.2007, the reply was given by the Returning Officer on 13.2.2007, and that the present petition was filed within fifteen days from the said date, the election petition which may be filed by the petitioner should be entertained by the Election Tribunal on merits without going into the question of limitation, provided the petitioner files such an election petition before the Election Tribunal under Section 31 of the Gujarat Panchayats Act, 1993 within fifteen days from today.

It is directed accordingly.

5. Subject to the above direction, Rule is discharged. The petition accordingly stands disposed of.

[M.S. SHAH, J.]

[K.A. PUJ, J.]

sundar/-